IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 30TH AUGUST 2006 / 8TH BHADRA 1928

WP(C).No. 11659 of 2006(K)

PETITIONER:

KOCHUNNI, AGED 71,
S/O. RAMAN, KAKKANATTU HOUSE, MADAIKONAM VILLAGE,
MUKUNDAPURAM TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:
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1. KERALA STATE FINANCIAL ENTERPRISES,
THRISSUR BRANCH, REP. BY ITS BRANCH MANAGER,
CHEMBUKAVU, THRISSUR.

2. THE DEPUTY TAHSILDAR (R.R),
OFFICE OF THE SPECIAL DEPUTY TAHSILDAR,
K.S.F.E. CHEMBUKAVU, THRISSUR.

BY ADV. SRI.RAJU JOSEPH, ADDL.SC.,KSFE LTD.
BY GOVERNMENT PLEADER SRI.KHADER KUNJU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/08/2006, ALONGWITH OP. NO.32024/02002 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO. 11659/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PAPER REPORT IN MALAYALA MANORAMA DT.8.12.98.

EXT.P2:- COPY OF THE FINAL REPORT SUBMITTED BY THE SUB INSPECTOR OF POLICE IN CRIME NO.611/98 OF THE IRINJALAKUDA POLICE STATION DT. NIL.

EXT.P3:- COPY OF THE PERSONAL DEATH ACCIDENT POLICY OF THE SON OF THE PETITIONER ISSUED BY THE NATIONAL INSURANCE COMPANY LIMITED IRINJALAKUDA DT.29.4.98.

EXT.P4:- COPY OF THE SALE NOTICE OF IMMOVABLE PROPERTY ISSUED BY THE RESPONDENTS DT.28.2.2006.

/TRUE COPY/

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C.N.RAMACHANDRAN NAIR,J.

W.P.C. No. 11659 of 2006 &
O.P.NO. 32024 OF 2002

Dated this the 30th day of August, 2006

JUDGMENT

While the petitioner in O.P.No. 32024 of 2002 is the guarantor for the loan availed from KSFE, the petitioner in WPC No. 11659 of 2006 is the principal debtor who availed loan. The guarantor after mortgaging the property in favour of KSFE sold the same to the principal debtor. According to KSFE it amounts to cheating for which the guarantor can be prosecuted. However, it is seen that guarantor himself obtained the property from the principal debtor and thereafter guarantor reconveyed the property to the principal debtor. Obviously, guarantor's case that this property was sold to him by the principal debtor to secure loan taken by him appears to be correct. In any case, since the property is sold to principal debtor, it was still available to the KSFE to be proceeded against in recovery proceedings. When stay was granted by this Court on 1.11.2002 against prosecution of the guarantor, this Court left freedom to the respondents to sell the

property. Even though nearly four years are over from the date of the stay order, respondents have not been able to sell the property. Since sale was not seen effected this Court felt that this could be a case of advancing loan on inadequate security. Therefore the Branch Manager was directed to file an affidavit. However, the person who granted the loan retired and the present Branch Manager has filed a counter affidavit. In any case in spite of specific direction to sell the mortaged property immediately vide order dated 7.2.2006, respondents have not sold the property. Obviously KSFE is irresponsible or indifferent in the matter. In any case, I do not think there is any need for this Court to retain the Writ Petitions in this Court as the respondents are equally indifferent in the matter. In the circumstances, OP and WP are disposed of directing the respondents first to dispose of the mortgaged property by sale in public auction and without sale and recovery from the mortgaged property no proceedings for recovery should be initiated against the principal debtor or against the guarantor. If guarantor's liability is limited to the mortgaged property then no further recovery should be initiated against the guarantor. However, if personal bond is

executed then recovery can be effected for balance arrears if any due after the sale of the mortgaged property and after adjusting sale proceeds towards loan arrears.

(C.N.RAMACHANDRAN NAIR)
Judge